

83-1110

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ALEXANDER L. STEVAS,
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No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

ANN RUPLE,

Petitioner,

v.

CITY OF VERMILLION, SOUTH DAKOTA, a Municipal Corporation; CARL WEINAUG, Individually and as City Manager of the City Vermillion, South Dakota; CHARLES WOODMAN, Individually and as Mayor of the City of Vermillion, South Dakota; DORN VAN CLEAVE, ARCHIE TEIGEN, JAMES JULIN, JAMES GUFFEY, WILLARD POWELL, and LOREN CARLSON, as fully elected, qualified and acting aldermen in and for the City of Vermillion, South Dakota,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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Respondents respectfully submit this Brief in Opposition to the Petition for Writ of Certiorari previously filed on behalf of Ann Ruple. All of the parties to the proceeding in the Court whose judgment is sought to be reviewed are contained in the caption of this case as set forth in the cover of this Brief.

QUESTION PRESENTED

1. Whether the principles of res judicata and collateral estoppel bar a federal civil rights action predicated on the alleged wrongful discharge of a public employee who had previously brought an action for the same alleged wrongful discharge, together with a defamation claim, in state court, which action was dismissed by the state court on grounds that the plaintiff was an employee at will, and that the plaintiff herself had published any stigmatizing reports.

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OPINIONS BELOW

The United States District Court for the District of South Dakota issued a Memorandum Opinion on December 23, 1982, dismissing Petitioner's civil rights action under the doctrine of res judicata. That opinion is appended to the Petition for Writ of Certiorari as Appendix A-2. The United States Court of Appeals for the Eighth Circuit, in a unanimous opinion, affirmed the judgment of the district court. See Ruple v. City of Vermillion, 714 F.2d 860 (8th Cir. 1983). ~~That opinion is reprinted and attached as Appendix A to this brief.~~

JURISDICTION

Petitioner correctly states that the judgment of the United States Court of Appeals for the Eighth Circuit was entered on August 19, 1983, and that the

order denying petition for rehearing and suggestion for rehearing en banc was entered on September 28, 1983. Thus, the jurisdiction of this Court was timely invoked pursuant to 28 U.S.C. §§ 1254 and 2201.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the following Constitutional and statutory provisions:

United States Constitution
Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life,

liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. Section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia

shall be considered to be a statute of the District of Columbia.

28 U.S.C. Section 1738

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

STATEMENT OF THE CASE

Ann Ruple, the Petitioner, was discharged from employment as a Finance Officer for the City of Vermillion, South Dakota, on January 19, 1982. Before discharging Ruple, the city council met in executive session and afforded Ruple an opportunity to present her case for continued employment. Following her discharge, Ann Ruple instituted an action in South Dakota state court in February, 1982, premised on her alleged wrongful

discharge. In addition to her wrongful discharge claim, she asserted a claim for defamation, based on the alleged publication of a report regarding her work performance by Vermillion's City Manager, Carl Weinaug. The defendants in the state court action, Carl Weinaug and the City of Vermillion, moved for summary judgment, and on March 23, 1982, the state court ruled that Ruple had no legitimate claim for damages against the City for wrongful discharge because she was an employee at will and could be terminated at any time without cause. In addition, the state court ruled that Ruple had no valid claim for defamation, because the report that the City Manager had prepared and delivered to the city council was privileged, did not demonstrate the requisite malice, and had been

published to the news media by Ruple herself.

Following entry of judgment against her in the state court action, Ruple commenced this civil rights action in federal court in April, 1982, once again asserting claims based upon her discharge from employment. In the federal civil rights action, Ruple sued the same defendants as she had previously sued in state court, together with the individual members of the Vermillion City Council. Ruple's federal complaint alleged that by discharging her from employment the defendants had deprived her of liberty and property without due process of law. The defendants in the federal civil rights action moved for summary judgment on the basis of res judicata. The federal district court granted that motion, and the judgment of the district

court was affirmed by the United States Court of Appeals for the Eighth Circuit in a unanimous opinion.

REASONS FOR DENYING THE WRIT

The Petitioner asserts that this Court should grant her petition for a writ of certiorari on the ground that this case presents the identical issue presented to this Court in the case of Migra v. Warren City School District Board of Education, No. 82-738, cert. granted, 103 S.Ct. 722, 51 U.S.L.W. 3508 (Jan. 11, 1983). That case was argued before this Court on October 11, 1983. Petitioner, here, seeks intervention of this Court to preserve her case should the Court in Migra create an exception to the application of res judicata in Section 1983 actions. Petitioner concedes that this case raises no issues not

raised in Migra. Moreover, Petitioner acknowledges that an adverse ruling in Migra will conclusively bar her civil rights action.

At the outset, it should be noted that Petitioner has failed to set forth or satisfy any of the required considerations governing review on certiorari. See S.Ct. Rule 17. Significantly, this Court has, since hearing argument in Migra, denied certiorari in a case presenting issues similar to those in the instant case and Migra. See Clooney v. Town of Harrisville, No. 83-292, appeal dismissed, cert. denied, 52 U.S.L.W. 3304, 3308 (October 18, 1983).

More importantly, however, a ruling favorable to the Petitioner in Migra will not materially aid the Petitioner in this case. Even if this Court, in Migra, should hold that the principle of res

judicata does not bar section 1983 actions raising federal claims that could have been brought in prior state proceedings, such a ruling will not affect Ruple's claim. This Court in Allen v. McCurry, 449 U.S. 90 (1980), unequivocally held that the principle of collateral estoppel does apply to bar the relitigation of facts and issues in section 1983 actions.

In the present case, Ruple's procedural due process claim would fail because the state court has already ruled adversely to Ruple on the essential facts which must form the predicate for a valid section 1983 claim.

First, the state court determined that Ruple's employment was at will, Ruple v. City of Vermillion, supra, 714 F.2d at 861, thus precluding the existence of any property interest in

continued employment--a prerequisite for a valid due process claim. See Bishop v. Wood, 426 U.S. 341, 344-46 (1976).

Second, Ruple cannot assert a valid due process claim based upon infringement of a liberty interest, because it was Ruple, not the defendants, who published to the press the information which she claims stigmatized her reputation. Ruple v. Weinaug, 328 N.W.2d 857, 861 (S.D. 1983).

Therefore, Ruple cannot assert a valid claim against the respondents for infringement of a constitutionally protected liberty interest. Bishop v. Wood, supra, 426 U.S. at 348-49 (communication not made public by defendants cannot properly form the basis for a claim that plaintiff's interest in good name, reputation, honor, or integrity was thereby impaired).

The state court determined these critical issues adversely to Ruple. These determinations become binding against Ruple under the doctrine of collateral estoppel and the teachings of Allen v. McCurry. Therefore, even if this Court did hold that the doctrine of res judicata does not bar Petitioner's civil rights claims, it is clear that she possesses no valid federal civil rights claim because the prior state court adjudication negates the existence of the essential elements of such a claim.

CONCLUSION

Respondents respectfully request that the Court deny Ruple's Petition for Writ of Certiorari, because this Court's holding in Allen v. McCurry would bar Petitioner's federal civil rights claim

under the doctrine of collateral estoppel, regardless of this Court's ruling in Migra v. Warren City School District Board of Education.

Respectfully submitted,

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Sioux Falls, South Dakota
January 18, 1984